

MAY 12 2014

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District of Georgia
Name (under which you were convicted): Adrian Martinez-Montanez	Docket or Case No.:
Place of Confinement: Federal Correctional Complex, Coleman-Low	Prisoner No.: 22993-171
UNITED STATES OF AMERICA v.	Movant (include name under which you were convicted) Adrian Martinez-Montanez

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:
United States District Court
Northern District of Georgia
Atlanta Division

(b) Criminal docket or case number (if you know): 1:11-CR-239-CAP-!-CA
2. (a) Date of the judgment of conviction (if you know): March 15, 2013

(b) Date of sentencing: April 25, 2013
3. Length of sentence: 168 months, 5 years supervised release
4. Nature of crime (all counts): Count One: Title 21 U.S.C. §846, 841(b)(1)(A)(ii) conspiracy to possess with the intent to distribute cocaine.
Count Two: Title 18 U.S.C. §1956(H) money laundering
5. (a) What was your plea? (Check one)
(1) Not guilty (2) Guilty (3) Nolo contendere (no contest)
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?
No
6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No
8. Did you appeal from the judgment of conviction? Yes No
9. If you did appeal, answer the following:

(a) Name of court:
(b) Docket or case number (if you know):
(c) Result:
(d) Date of result (if you know):
(e) Citation to the case (if you know):
(f) Grounds raised:

N/A

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

(1) Docket or case number (if you know):
(2) Result:

(3) Date of result (if you know):
(4) Citation to the case (if you know):
(5) Grounds raised:

N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:
(2) Docket or case number (if you know):
(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No

N/A

(7) Result:

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

N/A

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No

N/A

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: My attorney told me that I could not appeal my sentence or conviction. Not having an understanding of the law, I trusted my attorney for guidance. With the benefit of hindsight, I now know my attorney misadvised me.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Mr. Martinez was denied effective assistance of counsel during the plea bargaining stage of the criminal proceeding.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Counsel's advice concerning several points salient to the guilty plea: counsel assured Mr. Martinez that the government would be required to provide an additional ~~sentencing~~ Rule 35 motion after sentencing for his efforts up to sentencing; that certain properties (his girlfriend's automobile) would not be forfeited; and that he would be deported to Mexico. None of this advice was accurate and some was completely inconsistent with circuit authority (i.e. presentencing substantial assistance may be credited through post-sentencing motions and that the district court or the United States Attorney have authority over immigration issues). If Mr. Martinez had been correctly advised, he would not have pleaded guilty, at least not without proper written assurances of the government's promised consideration.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

N/A

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: See explanation on page 5

GROUND TWO: The government coerced the guilty plea by threatening to prosecute Mr. Martinez's girlfriend for activities they reasonably knew she was not involved with.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

At the time, the girlfriend was living with Adrian Martinez and she was not involved in the illegal activities, though she was suspicious of them, but because of the legitimate business she could never be sure. The government threaten to indict her for mere association. This threat lead to Mr. Martinez's guilty plea.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

N/A

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: See explanation on page 5

GROUND THREE: Trial counsel failed to advise Mr. Martinez concerning the consequences of not filing a direct appeal.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

After the trial, Mr. Martinez was both uncomfortable with the process and dissatisfied with the outcome. Especially since his attorney had told him that the probable sentence (because of the assistance departure) would be 60 months. But when he told his attorney this and said he would like to appeal the ruling, his counsel invoked the plea agreement and appeals waiver in order to dissuade Mr. Martinez. More precisely, counsel told him, or Mr. Martinez understood, that the waiver precluded appeal. Counsel's inadequate or mistaken advice should result in the judgment being vacated and reinstated in order to permit Mr. Martinez the opportunity for direct appeal.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No N/A

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: See explanation on page 5

GROUND FOUR: At sentencing, counsel's decision to remain silent concerning the presentence investigation report was unreasonable both with regards to the foreseeability of the drug quantity, drug weight calculation, and safety valve.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The drugs attributed to Mr. Martinez were based in great part on money retrieved in a vehicle not near or located with the actual drugs that were discovered. On the existing record, the more plausible inference was that the money was, if anything, to be used for the purchase of the drugs actually seized; thereby rendering the attributed drug weight twice that which was proved. Somewhat less plausible, but still sufficient to demonstrate counsel's inadequate handling of the sentencing stage, the money was unrelated to the indicted conduct and fell outside the Guidelines enhancements altogether. That is, the money, if garnered from unrelated criminal conduct, should have only been used as part of the courts' variance or §3553 analysis, and not for the purposes of setting the initial range.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No N/A

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: **See explanation on page 5**

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Howard J. Manchel, Public Defenders Office
Atlanta Division

(b) At arraignment and plea: Same

(c) At trial: Same

(d) At sentencing: **Same**

(e) On appeal: No appeal

(f) In any post-conviction proceeding: None

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No N/A

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

This motion is timely filed within the one-year statutes pursuant to §2255(f)(1)

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

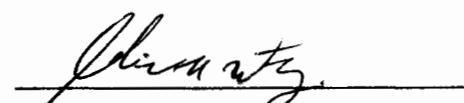
Therefore, movant asks that the Court grant the following relief:

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on
(month, date, year).

Executed (signed) on 5-8-14 (date).



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.